

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to ALL ACTIONS

ORDER AND MEMORANDUM

This matter is before the Court pursuant to a letter of July 11, 2006, from Timothy A. Pratt, lead counsel for Guidant. The letter addresses the deposition behavior—or one may say misbehavior—and the unprofessional conduct of Thomas Schultz, who is counsel for several of the bellwether plaintiffs in this matter. Mr. Schultz responded in a letter dated July 12, 2006. In turn, Mr. Pratt replied in a letter dated July 14, 2006. Both parties attached deposition excerpts with respect to the conduct of both Mr. Schultz and the attorney for Guidant, Mr. Northrup.

Guidant alleges that Mr. Schultz has been argumentative, unprofessional, and discourteous in defending depositions of Ms. Datcher-Williams and Mr. Duron. Importantly, Guidant asserts that Mr. Schultz has violated the Court’s Pretrial Order No. 3, which addresses the taking of depositions. Specifically, Pretrial Order No. 3 directed counsel “to cooperate with, and be courteous to, each other and deponents.” (Pretrial Order No. 3 at 1.) Moreover, Pretrial Order No. 3 also disallowed any speaking objections other than objections as to the form of the question and foundation and responsiveness of the answer. (*Id.* at 7.) The Pretrial Order went on to state that “[w]hen

a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege . . . unless such information is itself privileged.” (*Id.*)

Mr. Schultz asserts that he conducted himself in a professional manner and that the depositions of Ms. Datcher-Williams and Mr. Duron were uneventful. Further, Mr. Schultz has asserted in his letter that he was courteous to Mr. Northrup and that his conduct was in compliance with Pretrial Order No. 3. Mr. Schultz asserts that Mr. Northrup read verbatim the questions from a lengthy single-spaced outline, a number of which were “clearly objectionable,” according to Mr. Schultz.

Based upon the presentations of counsel, including the letters submitted by Mr. Pratt and Mr. Schultz, the Court having reviewed the contents of the deposition excerpts provided to the Court, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Thomas Schultz is directed to comply with the deposition protocol set forth in Pretrial Order No. 3 as well as the Federal Rules of Civil Procedure and the American Bar Association Civil Discovery Standards. The Court finds and concludes that Thomas Schultz has violated the deposition protocol set forth in Pretrial Order No. 3 which disallowed any speaking objections, other than objections as to the form of the question and foundation and responsiveness of the answer, and directed counsel “to cooperate with, and be courteous to, each other and deponents.” Thus, Thomas Schultz violated the

Court's Order. The Court expressly reserves the right to impose sanctions in the event there is a reoccurrence of Thomas Schultz's conduct.

2. The attached Memorandum is made a part hereof.

Dated: July 17, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court

MEMORANDUM

The Federal Rules of Civil Procedure, this Court's Order, and the American Bar Association Civil Discovery Standards require a higher standard of behavior and professionalism than Mr. Schultz displayed during the depositions the Court has reviewed. Mr. Schultz's conduct, at times, was unprofessional and clearly violated the Order of this Court that specifically prohibits speaking objections, especially when they are uncivil in tone, as were Mr. Schultz's. This Court and Magistrate Judge Arthur J. Boylan have made themselves available from the beginning of these cases for such matters if Mr. Schultz felt strongly enough to behave in this manner.

The days have long since passed when such conduct was tolerated by state and federal judges, the legal profession itself, and, perhaps most importantly, the nonlawyering public. The profession deserves better, the public expects better, and the interests of justice require a much higher standard of conduct.

This Court is all too familiar with the plight of the plaintiffs from time to time when they are put on trial by the simple act of filing a lawsuit. However, that is not what happened, based upon the Court's review of the excerpts of the deposition testimony and

the behavior of respective counsel. Even if the objections had a legal and evidentiary basis, the conduct was not justified. The Court does not believe the plaintiffs have been cast in a bad or negative light or that anyone's rights have been chilled. To the contrary, the individuals that were traumatized by the unprofessional conduct that occurred during the depositions were the plaintiffs and other nonlawyers in the room who witnessed the exchanges. Sadly, in the Court's view, such unprofessional conduct damages the legal profession.

The Court trusts that this conduct, in the interests of all individuals involved, will not occur again. This Court has consistently announced from the beginning of this MDL that it will make itself available to the lawyers involved to resolve any issues, particularly if they will promote the efficient and fair administration of the case.

D.W.F.